

ORIGINAL  
FILED  
08 MAY 23 PM 1:33  
CLERK: U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**DORIT LAW FIRM**  
J NILEY DORIT, Esq. SBN: 95414  
220 Montgomery Street, Suite 2100  
San Francisco, California 94104  
Tel: 415/956-2757  
Fax: 415/433-3308  
dorit@doritlaw.com

E-filing

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JCS

617

CV 08

VALERIE THAMES, an individual,  
CHRISTOPHER SMITH, a minor, by and  
through his Guardian ad Litem, AISHA  
ROACH,

Plaintiffs,

vs.

UNITED STATES OF AMERICA; SAN  
FRANCISCO VETERANS  
ADMINISTRATION MEDICAL CENTER,  
DOES 1 through 50, inclusive,

Defendants.

Case No.:

COMPLAINT FOR DAMAGES  
(Medical Malpractice – Wrongful Death)

DEMAND FOR JURY TRIAL

COME NOW Plaintiffs VALERIE THAMES, an individual, and CHRISTOPHER SMITH, a minor, by and through his Guardian ad Litem AISHA ROACH ("Plaintiffs") and complain of the defendants UNITED STATES OF AMERICA and SAN FRANCISCO VETERANS ADMINISTRATION MEDICAL CENTER, and allege as follows:

**JURISDICTION**

1. This Court has subject matter jurisdiction over this action. This is an action arising under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 1402(b), 2401(b) and 2671-2680, et seq., which Act provides this Court with exclusive jurisdiction in this matter.

2. Pursuant to the provisions of the Federal Tort Claims Act and prior to the commencement of this action, plaintiffs presented an administrative claim for damages to

1 the Department of Veteran Affairs, US Government, c/o Regional Counsel, in California,  
2 relating to the events and circumstances complained of herein. Said claim was timely  
3 presented on or about October 30, 2007. Defendant UNITED STATES OF AMERICA has  
4 neither denied nor accepted plaintiffs' claim as of the date of the filing of this Complaint for  
5 Damages.

#### 6 7 **INTRADISTRICT ASSIGNMENT**

8 3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the  
9 events giving rise to the claims occurred in this district at the San Francisco Veteran's  
10 Administration Medical Center, located at Fort Miley, in the City and County of San  
11 Francisco.

12 4. Due to the foregoing and pursuant to Northern District of California's Local Rules  
13 3-2 and 3-5, Plaintiffs request assignment to the San Francisco Division of the Northern  
14 District of California.

#### 15 16 **FIRST CLAIM FOR RELIEF**

17 5. Plaintiffs do not know the true names and identities of those Defendants  
18 designated as DOES 1 through 50, but allege that each of said fictitiously named  
19 Defendants was negligently and unlawfully responsible for the events hereinafter  
20 described, and for the injuries and damages sustained by Plaintiffs, and Plaintiffs will ask  
21 leave of Court to amend this allegation when the identity of each of said fictitiously named  
22 Defendant has been ascertained.

23  
24 6. At all times and places herein mentioned, defendant UNITED STATES OF  
25 AMERICA owned, operated and maintained a medical facility and hospital known as the  
26 San Francisco Veteran's Administration Medical Center (hereinafter "SFVAMC"), located  
27 at Fort Miley, in the City and County of San Francisco, State of California. At all times and  
28

1 places herein mentioned, defendant SFVAMC was a hospital and medical center providing  
2 health care, medical care, evaluation and related services to veterans.

3           7.       Plaintiffs are informed and believe and thereon allege that at all times  
4 mentioned, the events giving rise to this cause of action involved the acts and omissions of  
5 the agents and employees of Defendants UNITED STATES and SFVAMC, and such  
6 individuals were and now are health care providers, physicians, surgeons, nurses,  
7 technicians, professional corporations or other health related personnel with offices located  
8 within the County of San Francisco, California and have held themselves out to possess  
9 that degree of skill, ability, and learning common to health care practitioners of similar  
10 credentials, training and experience. Such agents and employees of Defendants include,  
11 but are not limited to, Jeremy Collins, MD, Charles Chiu, MD, Charles Anderson, MD,  
12 Roger Malonso, RN, Barbara Drye, MD, Leah Thiebaut, RN, Donna Soriano, RN, Ann  
13 Englert, RN, Guy Fahnhorst, RN, Romuela Delacruz, RN, and Scott Delacruz, MD.

16           8.       At all times and places mentioned herein, the Defendants, and each of them,  
17 and Jeremy Collins, MD, Charles Chiu, MD, Charles Anderson, MD, Roger Malonso, RN,  
18 Barbara Drye, MD, Leah Thiebaut, RN, Donna Soriano, RN, Ann Englert, RN, Guy  
19 Fahnhorst, RN, Romuela Delacruz, RN, and Scott Delacruz, MD were the agents and  
20 employees of each of the remaining Defendants, and were at all times acting within the  
21 scope of said agency and employment.

23           9.       At all times and places mentioned herein, Plaintiff VALERIE THAMES was  
24 the lawful wife and spouse of ROBERT THAMES (hereinafter the "decedent"). At all times  
25 and places mentioned herein, and for a period of greater than six months prior to the death  
26 of ROBERT THAMES, CHRISTOPHER SMITH was a minor residing in the household of,  
27  
28

1 and being primarily supported by, decedent ROBERT THAMES. ROBERT THAMES was  
2 a Marine Corps veteran. ROBERT THAMES died on August 1, 2007, from lung cancer.

3 10. At all times herein mentioned, plaintiff CHRISTOPHER SMITH was a minor,  
4 his date of birth being October 29, 1996. Prior to the commencement of this action, the  
5 above-entitled Court, by its Order regularly made and entered, appointed, AISHA ROACH,  
6 Guardian ad Litem of the minor plaintiff, and she was and ever since has been the  
7 regularly appointed, duly qualified and acting Guardian ad Litem of the minor plaintiff.  
8

9 11. On or about December 2005, and for some time prior thereto and thereafter,  
10 ROBERT THAMES sought and received health care from the defendant and its agents, for  
11 the purpose of obtaining diagnosis, care, and treatment in connection with a history of chest  
12 pain, coughing up blood, and vomiting blood. ROBERT THAMES employed said  
13 defendants, to examine, diagnose, treat, and care for him for compensation. In December  
14 2005, ROBERT THAMES presented to the VA Hospital complaining of chest pain and  
15 vomiting up blood. On or about December 19, 2006, ROBERT THAMES presented to the  
16 SFVAMC reporting that he was vomiting blood. On or about December 22, 2005, ROBERT  
17 THAMES again went to the SFVAMC and complained of chest pain and a history of vomiting  
18 blood. On or about December 24, 2005 ROBERT THAMES again went to the SFVAMC  
19 complaining of chest pain which was increasing and had a feeling of "burning". A chest x-  
20 ray was ordered by the SFVAMC physician. The written report of the chest x-ray was that  
21 there was a "rounded density" seen in the left lower lung field. The SFVAMC physician who  
22 interpreted the x-ray made a written recommendation that the "density" in the lung be  
23 evaluated further with a CT scan of the lungs. The recommended CT evaluation was never  
24 performed. ROBERT THAMES was not informed of the need for further evaluation of his  
25 lung. There was no further evaluation of ROBERT THAMES for his lung/chest issue in  
26  
27  
28



1 either 2005 or 2006. In February 2007, ROBERT THAMES finally underwent a repeat chest  
2 x-ray. The 2007 x-ray showed that the uninvestigated round lung "density" which had first  
3 appeared in December 2004, had grown into a much larger lesion which was determined to  
4 be late staged cancer which could no longer be contained. ROBERT THAMES died from  
5 his lung cancer on August 1, 2007, leaving his wife VALERIE THAMES and his dependent  
6 step son, CHRISTOPHER SMITH.  
7

8 12. At all times and places mentioned herein, defendants, by and through their  
9 agents and employees, carelessly and negligently instructed, examined, diagnosed,  
10 prescribed for, performed surgery on, cared for and treated ROBERT THAMES for his  
11 medical condition and lung condition, and defendants, by and through their agents and  
12 employees, provided hospital, medical, surgical, radiologic, health care, anesthetic, nursing,  
13 laboratory, x-ray, and ambulance services, care and attention in a careless and negligent  
14 manner, and defendants, by and through their agents and employees carelessly and  
15 negligently failed to provide ROBERT THAMES with proper, adequate or sufficient medical  
16 care, medicine, drugs, surgical, anesthetic or ambulance supplies, materials, equipment,  
17 appliances or apparatus. Said negligence included, among other things, the failure to  
18 reasonably evaluate the abnormal "density" found in ROBERT THAMES' lungs in December  
19 2005, the unreasonable failure to follow the written advice of its own physicians who had  
20 recommended further evaluation of the lung "density", the unreasonable failure to perform a  
21 follow up CT scan as recommended by VA physicians, the unreasonable failure to  
22 undertake means to identify the nature of the "density" in ROBERT THAMES' lung, the  
23 unreasonable failure to diagnose ROBERT THAMES with early lung cancer in 2005, and the  
24 unreasonable failure to provide medical care or treatment to ROBERT THAMES for his early  
25  
26  
27  
28

1 stage lung cancer in either 2005 or 2006, despite his abnormal chest x-ray and despite his  
2 documented history of chest pain, coughing and vomiting blood.

3 13. As a direct, legal and proximate result of said carelessness, negligence, acts,  
4 omissions and conduct of defendants, by and through their agents and employees,  
5 ROBERT THAMES was not diagnosed with his lung cancer in a timely fashion and was not  
6 for his lung cancer in 2005 or 2006. ROBERT THAMES was not treated for his lung cancer  
7 until at which time the cancer had grown and spread to the point where it could no longer be  
8 contained, causing ROBERT THAMES to suffer great physical pain die prematurely in  
9 August 2007.  
10

11  
12 14. As a further, direct and proximate result of said acts, omissions and conduct of  
13 defendants, and each of them, plaintiffs VALERIE THAMES and CHRISTOPHER SMITH,  
14 have been deprived of a kind and loving husband and Step-Father, benefactor, and of his  
15 care, comfort, society, support, services, love, companionship, affection, and security, all to  
16 their general damage.

17 15. As a further, direct and proximate result of said acts, omissions and conduct of  
18 defendants, and each of them, plaintiffs have incurred expenses for an appropriate burial  
19 and funeral, all to their general damage in an amount not yet determined. Plaintiffs will seek  
20 leave of Court to set forth the exact amount of these special damages when they are finally  
21 ascertained.

#### 22 PRAYER FOR RELIEF

23 WHEREFORE, plaintiffs pray for judgment against the defendants, and each of them,  
24 as set forth below:

- 25 1. For general damages in the amount of \$250,000;  
26 2. For special damages according to proof at trial and believed to be in the amount  
27 of \$1,000,000;  
28 3. For costs of suit incurred herein; and

1 4. For such other and further relief as the Court may deem proper and just.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to  
4 which they have a right to jury trial.  
5

6 Respectfully submitted,

7 Date: May 22, 2008

DORIT LAW FIRM

8  
9  
10   
11 J Niley Dorit  
12 Attorney For Plaintiffs  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28